COPIES OF A CRIMINAL LIBEL AS SEPARATE OFFENSES.—Libel may be a civil or a criminal offense. The gist of a civil action is damage to the reputation of the person libeled[1] so that publication to a third person must be proved.[2] Also the truth of the charge is a complete defense.[3] On the other hand, libel is a crime against the state because of its tendency to provoke a breach of the peace[4] and to corrupt the public morals.[5] Consequently, the truth is no defense[6] and a publication to the person libeled is sufficient to sustain the indictment,[4] since the tendency to a breach of the peace may be present in both cases. It is generally said that where a civil action for damages will lie, an indictment may be obtained.[7] In both civil and criminal cases publication is essential. In general, publication means a manifestation of the contents,[8] although some courts deem an irrevocable delivery sufficient when criminal libel is alleged.[9] Accordingly, it follows that proof of the composition of libelous matter and its existence in printed form is insufficient.[10] Every new publication, too, is an additional offense.[11] Since the subject-matter and the material on which it is written constitute a substantial entity, if this subject matter is copied upon other material the copy is distinct though similar libelous matter.[12] The publication of each copy is considered a separate act and there are as many libels as there are copies published, each one of which will support an indictment.[13] This must be distinguished from the case of a number of persons reading a single writing, *e. g.*, a posted placard. Logically, therefore, each copy of a certain edition of a newspaper would seem a separate offense. However, respectable authority supports the view that in the case of civil libel an edition of a newspaper is one composite act; a single publication.[14] And one court includes subsequent editions in which the libelous matter is reprinted, within this single publication provided they precede the bringing of an action.[15] The same result seems attainable in criminal cases.

A recent federal case, *United States* v. *Smith* (D. C., D. Ind. 1909)

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[1]Times Pub. Co. *v.* Carlisle (1889) 94 Fed. 762.

[2]Warnock *v.* Mitchell (1890) 43 Fed. 428.

[3]Baum *v.* Clause (N. Y. 1843) 5 Hill 199.

[4]State *v.* Avery (1828) 7 Conn; Edwards *v.* Wootan (1608) 12 Rep. 35.

[5]Provident Sav. Life Ins. Co. *v.* Johnson (1903) 115 Ky. 84; 1 Bishop, Criminal Law § 734; 2 *id.* § 907.

[6]Smith *v.* State (1870) 32 Tex. 594.

[7]Browning *v.* Comw. (1903) 116 Ky. 282.

[8]Regina *v.* Lovett (1839) 9 C. & P. 462; Rex *v.* Burdett (1820) 4 B. & Ald. 95 (dissenting opinion); Wharton, Criminal Law § 1618; Stephen, Digest Crim. Law §§ 267, 270.

[9]Lyle *v.* Clason (N. Y. 1804) 1 Cain 581; Rex *v.* Burdett *supra.* The place of publication determines the *situs* of the offense.

[10]Youmans *v.* Smith (1897) 153 N. Y. 214; Rex *v.* Almon (1770) 5 Burr. 2686.

[11]Sharpe *v.* Larson (1897) 70 Minn. 209.

[12]Townshend, Libel & Slander § 117.

[13]Rex *v.* Carlisle (1819) 1 Chit. 451; Staub *v.* Van Benthuysen (1884) 36 La. Ann. 467. See Bigelow *v.* Sprague (1886) 140 Mass. 425.

[14]Galligan *v.* Sun Printing & Pub. Co. (N. Y. 1898) 25 Misc. Rep. 355; Murray *v.* Galbraith (1908) 86 Ark. 50.

[15]Galligan *v.* Sun Printing & Pub. Co. *supra.*

173 Fed. 227, involved these principles. The defendants, editors of a newspaper in Indiana, were indicted in Washington, D. C., on the charge of publishing there an alleged criminal libel contained in fifty copies of the said newspaper sent through the mails from Indiana to subscribers in Washington. On an application for an order for the removal of the defendants to Washington for trial, the court refused the order on the ground that there was but one publication and, since that was in Indiana, there was no crime in Washington.

The circulation of some copies of the paper in a jurisdiction other than that of the publication of the paper presents a difficult question. On the theory that every copy of libelous matter constitutes, when published, a separate libel the decision is unsupportable. Moreover, in the case of newspapers it has been held that a criminal libel is committed in every jurisdiction in which a copy is received and read.[16] On the theory that the publication of an edition of a newspaper is a single composite act, the reading of a single copy completes the offense so that the remaining copies merely increase its magnitude; the readers only are increased in number. The principal case, apparently adopts this view, but extends it, by disregarding the fact that some of these readers were in another jurisdiction. Only if this disregard is justifiable does the court seem correct in holding that there was no publication in Washington, the jurisdiction into which some copies were forwarded from Indiana. However, let it be assumed with the court, that the libel was published only in Indiana and that the crime was there complete. It has been suggested that a newspaper libel complete in one jurisdiction is a continuing crime in another in which some copies actually circulate and is there cognizable as a crime,[17] since a crime complete in one jurisdiction is punishable in any jurisdiction in which its effects continue.[18] Accordingly, it would seem that there was in Washington an offense sufficient to support the indictment so that the defendant was removable to that jurisdiction for trial.

EXECUTION OF A PAROL TRUST BY CANCELLING THE DEED CREATING IT.—A recent New Jersey case, *Lake* v. *Weaver* (N. J. 1909) 74 Atl. 451, suggests the possibility of executing a parol trust in realty through the destruction, by the trustee, of the deed creating it. In general the statute of frauds makes unenforceable parol trusts in lands, but constructive trusts are excepted.[1] Accordingly, a conveyance untainted by fraud or mistake from A to B, on a parol trust for A, by a deed absolute on its face, vests an absolute estate in B.[2] On strict principle, the fraud or mistake accompanying such a transaction which is sufficient to raise a constructive trust is limited to that involved in the procurement of an instrument.[3] However, in some jurisdic-

[16]Comw. *v.* Blonding (Mass. 1825) 3 Pick. 304; Baker *v.* State (1895) 97 Ga. 452; State *v.* Kountz (1882) 12 Mo. App. 511; *In re* Buell (1875) 3 Dill. 116; 2 Bishop, Crim. Law § 949; Clark & Marshall, Crim. Law 772.

[17]Armour Packing Co. *v.* U. S. (1907) 153 Fed. 1.

[18]Act of March 2, 1867, ch. 169, 14 Stat. L. 484; Armour Packing Co. *v.* U. S. *supra.*

[1]Goldsmith *v.* Goldsmith (1895) 145 N. Y. 313.

[2]Sturtevant *v.* Sturtevant (1859) 20 N. Y. 39.

[3]Rasdall's Adm'rs. *v.* Rasdall (1859) 9 Wis. 379.